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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,634	10/15/2001	Kiyofusa Egashira	JP920000319US1	3272
7590 06/13/2006			EXAMINER	
Ronald A. D' Alessandro, Esq. Hoffman, Warnick & D' Alesandro LLC Three E-Comm Square Albany,, NY 12207			POND, ROBERT M	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,634

Applicant(s)

EGASHIRA ET AL.

Examiner

Robert M. Pond

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The Applicant amended claims 1, 4, 6, 7, and 9. All pending claims (1-10) were examined in this final office action necessitated by amendment.

Response to Arguments

Applicant's arguments filed 28 March 2006 have been fully considered but they are not persuasive. The Examiner respectfully disagrees with the Applicant. The arguments presented based on the amended language do not support the claimed invention. For example, the first claim element in claim 1 reads:

“obtaining supply information including a plurality of supply quantities and a supply price that depends on each supply quantity from at least one commodity supplier for a particular commodity item and arranging the information into a supply list for storage in a database, wherein the supply price lowers as the supply quantity increases;”

It is notoriously old and well-known for a seller or supplier of goods to base price on the quantity of a supply of goods or the quantity of an individual supply of one type or goods. A supplier who has only quantity one of a popular kids video game is going to price it based on quantity, the price being higher versus having a million of the same video game being priced to sell. This is fundamental in business. Furthermore, the claimed invention is simply putting the quantity-price

supply information into a database. Fisher discloses storing supply information, quantity and price in a database, and further discloses dynamically adjusting pricing and quantities to meet supply and demand.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 1. Claims 1-3 and 6-8 are rejected under 35 USC 103(a) as being unpatentable over Fisher (Paper # 20051223, US 5,835,896) in view of Official Notice (regarding notoriously old and well-known, hereinafter referred to as ON1).**

Fisher teaches a system and method for conducting a multi-bidder, interactive auction (see at least abstract; Fig. 1 and 2). Fisher further teaches:

- Obtaining supply information from at least one supplier and storing: storing supplier's minimum bid and supplier's list price (see at least Fig. 2; Fig. 4 (30); Figs. 9-11 (93); col. 6, lines 20-30; col. 10, lines 12-14).

- Receiving purchase wish information and storing: bidder submits bid (see at least Fig. 2 (Current high bidder's table); Fig. 4 (31); Fig. 5 (46); Fig. 9 (91); Fig. 10 (111); Fig. 11 (131); col. 7, lines 42-49; col. 10, lines 6-62).
- Predetermined time period: bid closing; over a period of time (see at least col. 4, lines 20-25).
- Selecting optimum combination; comparing the desired purchase price and desired purchase quantity: Ranks bids in descending order by price (see at least Fig. 9 (91); Fig. 10 (111)); ranks bids in descending order by price and quantity (see at least Fig. 11 (131)); accumulates rolling quantity for commodity quantity allocation (see at least Figs. 9-12 (94)).
- Transmitting notification: notification on bids (see at least Fig. 4 (24, 27); col. 8, lines 15-29).
- Supply quantity ranges: system supports concurrent bid sessions; offering multiple lots (see at least col. 8, lines 5-14). Please note examiner's interpretation: system supports auctioning similar or same product with varying or same quantities concurrently.

Fisher teaches all the above as noted under the 103(a) rejection and further teaches storing pricing information in a database, but does not specifically disclose supply price that depends on each supply quantity...wherein the supply price lowers as the supply quantity increases. The Examiner takes the position that it is notoriously old and well-known for a seller or supplier of goods to base price on the quantity of a supply of goods or the quantity of an individual supply

of one type or goods. For example, a supplier who has only quantity one of a popular kids video game is going to price it based on quantity, the price being higher versus a lower price of a million of the same video games for sell by the same supplier. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system and method of Fisher to base price on the quantity of an item to sell as taught by ON1, in order to sell products based on price-quantity relationships.

Pertaining to system claims 6-8

Rejection of claims 6-8 is based on similar rationale as noted above.

2. **Claims 4-5 and 9-10 rejected under 35 USC 103(a) as being unpatentable over Fisher (US 5,835,896) and ON1 (regarding notoriously old and well-known in the arts), as applied to claims 3 and 8, further in view of Official Notice (regarding old and well-known in the arts, hereinafter referred to as ON2).**

Fisher and ON1 teach all the above as noted under the 103(a) rejection and teach maximizing value to the seller, but do not disclose factoring gross profit into the decision-making process. The Examiner takes the position that it is old and well-known in the arts to calculate gross profit as claimed by calculating total sales and subtracting from total sales the total cost of the item sold. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the method of Fisher and ON1 to disclose gross profit calculations as

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taught by ON2, in order to quantify gross profit for sellers, and thereby attract sellers to the service.

Pertaining to system Claims 9-10

Rejection of Claims 9-10 is based on similar rationale as noted above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Robert M. Pond', is positioned above the printed name.

Robert M. Pond
Primary Examiner
June 9, 2006